

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAVID CARMICHAEL,

ORDER

Petitioner,

09-cv-388-slc

v.

WARDEN HOLINKA,

Respondent.

In an order dated August 14, 2009, I concluded that the Bureau of Prisons had violated 18 U.S.C. § 3624(c) by denying plaintiff the full 12 months in a halfway house authorized by the statute without considering each of the relevant factors identified in 18 U.S.C. § 3621 for making such a determination. I granted the petition for a writ of habeas corpus under 28 U.S.C. § 2241 and directed respondent to provide petitioner with the full 12 months or make a new decision that complies with 18 U.S.C. §§ 3621 and 3624.

Petitioner has moved for reconsideration of that decision, arguing that the bureau should not have an opportunity to fix its mistake. Petitioner's motion will be denied. Section 3624 does not give petitioner an absolute right to 12 months in a halfway house; it only requires the bureau to make decisions regarding halfway house placement in light of the

factors enumerated in § 3621(b). Thus, the bureau must be given the opportunity to comply with the law.

This is no different from the situation that occurs when a prisoner shows that his criminal trial contained a procedural error in violation of the Constitution. The finding of such an error requires the government to release the prisoner *or* provide him a new trial that complies with the Constitution. Wilkinson v. Dotson, 544 U.S. 74, 83 (2005) (after successful habeas petition, "the State may seek a new judgment (through a new trial or a new sentencing proceeding)"). If petitioner believes that respondent's new decision fails to comply with the law, he may file a new petition.

ORDER

IT IS ORDERED that petitioner David Carmichael's motion for reconsideration, dkt. #10, is DENIED.

Entered this 27th day of August, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge